



DISABILITY RIGHTS ADVOCATES FOR TECHNOLOGY

(A 501 (c) (3) Public Charity)

Federal Tax ID #55-0877645

Website: www.draft.org

314-965-4938

July 15, 2008

Disability Rights Section, Civil Rights Division
US Department of Justice
1425 New York Ave NW, Suite 4039
Washington, DC 20005

Re: Proposed rulemaking to amend regulations issued under Titles II and III of the Americans with Disabilities Act (ADA) Nondiscrimination on the Basis of Disability in State and Local Government Services, 73 FR 34466; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 73 FR 34508.

Disability Rights Advocates for Technology "DRAFT" represents people with disabilities who refuse to be defined by their disability and whose passionate enthusiasm for participating in life's activities is supported by Universal Design and new and emerging technologies.

Today, we all face extraordinary challenges affecting every facet of our lives and we are all looking to new and emerging technologies as a pathway to solutions to these challenges. Solutions which are already offering improvements in medical and rehabilitation technology and quality of life issues for people with disabilities never dreamed of before.

This rulemaking process will have a dramatic and lasting impact on every person in this country for decades to come.

"Laws alone cannot make men see right. We are confronted primarily with a moral issue. It is as old as the Scriptures and as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities, whether we going to treat our fellow Americans as we want to be treated."

Words spoken in 1963 by President Kennedy when addressing civil rights issues and relevant today as we address challenges to the civil rights of people with disabilities.

Mobilizing America's Heroes



500 Fox Ridge Road, Saint Louis, Missouri 63131



With the aging baby boomer population the number of people with disabilities is expected to grow dramatically over the next few years and there are some who seek to institute public policy which will throttle the number of people with disabilities which they will be required to accommodate.

Because the ADA is a civil rights law the regulations designed to implement it fully must be developed with the highest ethical and moral standards and in an atmosphere free from hidden agendas. And because there are those who chafe at the requirement of providing equal rights and opportunities to disabled Americans, regulations must be easily interpreted so their intent is clear and sufficiently broad to provide a timeless standard.

This rulemaking process is dealing with solutions to issues of access that have long been delayed because of concerns regarding their financial impact upon the business community. Universal Design provides extraordinary benefits to our society as a whole and integrates people with disabilities at the highest level possible. By adopting regulations that foster an environment benefiting the continued development of universally designed technology solutions we will make America more accessible to all people at a cost which is sustainable.

The Segway is representative of that which can be achieved in such an environment.

It is a universally designed assistive technology device, designed to as closely as possible represent the human footprint and human mobility characteristics. The width of the Segway, 25 1/2", is consistent with the shoulder width of an average framed human being and smaller of than the shoulder width of a large framed human being which typically exceeds 26 inches.

The Segway is designed to operate at infinitely variable speeds consistent with human behavior between 0 mph and 12.5 mph. While the top speed of the Segway, 12.5 mph, is consistent with that of the fastest power wheelchairs and scooters, its top speed is slower than the typical human being.

The fastest human being has been recorded at 27 mph however the typical human can run at an average speed of 15 mph. Even older humans are quicker than the Segway, in 2005 at the National Senior Games, Bobby Whilden, in the age 70 to 74 bracket, ran the hundred meters at a speed of 17.5 mph and James Hammond in the age 90 to 94 age bracket ran the hundred meters at a speed of 11.3 mph.

The Segway is designed to be usable indoors and is battery operated. The weight of a Segway, 105 pounds or less, is lighter than most scooters and virtually all powered wheelchairs.

The tires on the Segway are made of silica and are thus non-marring, they generate virtually no shear force and have less soil compression force than a human footprint, making them less likely to cause damage to flooring or other walking surfaces than human foot traffic.



500 Fox Ridge Road, Saint Louis, Missouri 63131



There has not been a single reported incident of a person with a disability using the Segway as an assistive device having caused any substantive injury to another in the more than five years since it has been used by consumers.

In addition to the white paper published by our organization in December 2007 and a paper published in Archives of physical medicine and rehabilitation last fall titled Investigating the Segway Human Transporter as an Alternative Mobility Device for People with Disabilities; The Segway® Personal Transporter (PT) has been evaluated by four independent agencies representing interests from around the world.

All of the studies and reports support the assertion that the Segway if not the safest is certainly among the safest of all mobility devices and none of the reports cite any unique or substantive safety concerns about the use of the Segway interacting with others.

The Segway is so appropriate for use in crowded pedestrian environments that it is being used by police and security in the densest of crowds at events all over the world including the Super Bowl and the upcoming Olympic Games in China.

Even studies performed by this Department's National Institute of Justice acclaim the appropriateness and benefits of the use of Segways in community policing efforts allowing officer interaction with pedestrians.

In 1991 when publishing the first regulations implementing the ADA US Attorney General Richard Thornburgh consistently made reference to the fact that there would be no exhaustive list of devices and services because any attempt to do so would eliminate the new devices that would become available with new and emerging technology.

It is not in the public interest nor in the interest of people with disabilities and it is not consistent with federal law to favor a device designed solely for use by a mobility impaired person. That is the Medical Model of disability that the Rehabilitation Act led us away from 35 years ago, not the Social Model we have embraced and expanded upon in this century.

The Segway has been subjected to an atmosphere of lies and innuendo reminiscent of the Salem witch trials and the McCarthy hearings and there are those who have unwittingly bought into these untruths and reacted similarly to a caveman first encountering fire.

There is absolutely no evidence that the Segway poses any additional risk over that of any other mobility device and the continued contemplation of the imagined dangers has no basis in reality and cannot be supported by any scientific or engineering study in existence today.



500 Fox Ridge Road, Saint Louis, Missouri 63131



The use of any device at speeds which are unsafe or inappropriate for current conditions, whether using a wheelchair or an EPAMD is a behavioral issue. According to studies the use of a power wheelchair at speeds of 6 mph in crowded pedestrian conditions poses greater safety challenges than the use of an EPAMD at greater speeds in the same environment. Behavioral issues must be handled in a similar manner to those suggested in this NPRM for behavioral issues surrounding service animals.

The Department must adopt definitions in keeping with existing federal law and favored policy benefiting people with disabilities and our entire society.

The 1973 Rehabilitation Act, defines an assistive technology device as "any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, which is used to increase, maintain, or improve functional capabilities of individuals with disabilities".

It is an all encompassing definition and includes all items from Segways to wheelchairs. There is absolutely no definition or mention of any other type of assistive device, including a wheelchair or scooter in the entire 1973 Rehabilitation Act as amended in 1998, nor does there need to be.

There are thousands of people today who are using Segways in precisely the same places and conditions as those using wheelchairs, in addition to those places which are inaccessible for wheelchairs. People with multiple sclerosis, Parkinson's disease, COPD, amputations, spinal cord injuries and many other neurological conditions, have been using the Segway as their primary assistive device for more than five years without incident

Today there are more than 150 Segs4Vets recipients who have returned from service to our nation in Operation Iraqi Freedom and Operation Enduring Freedom who have been severely injured, permanently disabled and who will have difficulty walking the rest of their lives who are using the Segway to excel in their physical therapy, return to college, participate more fully in activities with their family members, and live a full and high quality life.

This summer the Veterans Health Administration will begin a pilot program using the Segway as a mobility solution for veterans receiving VA health care benefits with mobility limitations related to various orthopedic, neurologic and cardiopulmonary impairments.

These veterans who have served our nation so valiantly who are now finding their way to a higher quality life through the use of a mobility device which allows them to stand deserve better than to suffer further segregation by those who oppose universally designed technology solutions.

The proposed rules categorizing and defining assistive mobility devices are fundamentally flawed, why should a device which was specifically designed to be integrated with pedestrian traffic, has a smaller footprint than a wheelchair, weighs less than a power wheelchair, is more maneuverable than



500 Fox Ridge Road, Saint Louis, Missouri 63131



a wheelchair, has less capacity to pose damage to flooring and the environment than a wheelchair and which has a demonstrated safety record over five years equal to or better than power wheelchairs and scooters be subjected to additional restrictions and compromises to access over that of a wheelchair simply because it was designed utilizing the principles of Universal Design and that it allows its user to stand?

While we believe that attempting to define assistive devices and categorize them can only result in the narrowing of rights of individuals with disabilities and inhibit the use of Universal Design and new technologies in improving the quality of our lives and our independent living, if categorization should occur, it must focus solely on the design purpose and operating characteristics of an assistive mobility device,

A device designed to be usable indoors, and meeting the scoping requirements of ADAAG this would include manual and power driven wheelchairs, scooters, and EPAMD's.

Or a device with a primary design purpose of outdoor use, which may not meet the scoping requirements of ADAAG and would be inclusive of golf carts, bicycles, tricycles.

For more than five years thousands of disabled Americans who use Segways have been subjected to discrimination and prejudice born out of the dissemination of misinformation by those with hidden agendas.

Our Segs4Vets recipients, our Nations Heroes, have been required to step down from their Segways and be pushed in wheelchairs by their wives so they could visit Disney World with their children.

We must never again allow innuendo and unsubstantiated allegations to be used against future advancements in technologies which will benefit people with disabilities.

We propose the following modifications to the Proposed Rules and ask that the Department adopt them and other regulations and policies which will put an end to this injustice.

Sincerely

Jerry Kerr
President



500 Fox Ridge Road, Saint Louis, Missouri 63131



Definitions:

Assistive Mobility Device:

Shall mean any item, piece of equipment which is used to increase, maintain, or improve the functional capabilities of the individual with a mobility related disability.

Indoor Assistive Mobility Device:

Shall mean any assistive mobility device designed to be usable indoors which meets the scoping requirements of the ADAAG which may be modified from time to time, (i.e.: Currently a footprint not larger than 30 inches in width and 48 inches in length and weigh not more than 600 pounds when occupied) and are not propelled by fossil fuel powered engines.

This definition would be inclusive of manual and power driven wheelchairs, scooters, walkers, crutches, canes, braces, EPAMD's.

Outdoor Assistive Mobility Device:

Shall mean any assistive mobility device designed with a primary purpose of outdoor use whether or not meeting the scoping requirements of the ADAAG and whether manually propelled or powered by engines powered by batteries, fossil, or other fuels.

This definition would be inclusive of golf carts, bicycles, tricycles, or any other mobility aid designed to operate in areas without defined pedestrian routes.



500 Fox Ridge Road, Saint Louis, Missouri 63131



§ 35.137 Mobility devices

(a) Use of indoor assistive mobility devices:

A public entity shall permit individuals with mobility impairments to use indoor assistive mobility devices in any areas open to pedestrian use.

(b) Outdoor Assistive Mobility Devices:

A public entity shall make reasonable modifications in its policies, practices, and procedures to permit the use of Outdoor Assistive Mobility Devices by individuals with disabilities in the outdoor environment unless the public entity can demonstrate that the use of the device is not reasonable or that its use will result in a fundamental alteration of the public entities service, program, or activity.

(c) Development of policies permitting the use of Outdoor Assistive Mobility Devices:

A public entity shall establish policies to permit the use of outdoor assistive mobility devices in the outdoor environment by individuals with disabilities when it is reasonable to allow an individual with a disability to purchase or participate in a service, program, or activity.

Whether a modification is reasonable to allow the use of an outdoor assistive mobility device by an individual with a disability shall be determined based on;

- The dimensions, weight, and operating characteristics of the device.
- The actual risk of potential harm to others by the operation of the Outdoor Assistive Mobility Device.
- The actual risk of harm to the environment or natural or cultural resources or conflict with federal land management laws and regulations in relation to other permitted means of mobility such as horseback

(d) Obligation to stow Outdoor Assistive Mobility Device

A public entity shall be under no obligation to stow an Outdoor Assistive Mobility Device when not in use.

(e) Inquiry into the use of Assistive Mobility Devices.

A public entity may ask a person using an Assistive Mobility Device, if the mobility device is needed due to the person's disability. A public entity shall not ask a person using a mobility device questions about the nature or extent of the person's disability.

(f) Behavior

A public accommodation may prohibit an individual's use of an assistive mobility device if the individual is operating the device in a manner which poses a direct threat to the safety of others that cannot be eliminated by modifications in its policies, practices, and procedures or if the individual's behavior in the operation of the device causes a fundamental alteration of the nature of the service that the public accommodation provides.



500 Fox Ridge Road, Saint Louis, Missouri 63131



Responses to questions posed by DOJ related to Assistive Mobility Devices:

Question: “Please comment on the proposed definition of other power-driven mobility devices. Is the definition overly inclusive of power-driven mobility devices that may be used by individuals with disabilities? The Department’s proposed regulatory text on accommodating wheelchairs and other power-driven mobility devices is discussed in § 35.137 of the section-by-section analysis.”

The Department's proposed categorization and definitions of assistive mobility devices are fundamentally flawed and should focus solely on the design and operating characteristics of an assistive mobility device i.e. whether it's designed to be usable indoors or its primary design purpose is for outdoor use, and if the device meets the size and weight scoping requirements of the ADA AG.

Rather than adopting a definition which is not supported by federal law The Department should adopt a category of “Outdoor Assistive Mobility Devices” defined as “any assistive device designed with a primary purpose of outdoor use whether or not meeting the scoping requirements of the ADAAG and whether manually propelled or powered by engines operate on batteries, fossil, or other fuels.

This definition would be inclusive of golf cars, bicycles, tricycles, or any other mobility aid designed to operate in areas without defined pedestrian routes.”

Question: “As explained above, the definition of "wheelchair" is intended to be tailored so that it includes many styles of traditional wheeled mobility devices (e.g., wheelchairs and mobility scooters). Does the definition appear to exclude some types of wheelchairs, mobility scooters, or other traditional wheeled mobility devices? Please cite specific examples if possible.”

The Department should adopt definitions in keeping with existing federal law and favored policy benefiting people with disabilities and our society as a whole. The 1973 Rehabilitation Act, as amended in 1998, defines an assistive technology device as "any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, which is used to increase, maintain, or improve functional capabilities of individuals with disabilities".

Rather than attempting to modify the definition of a wheelchair to include things that are not wheelchairs The Department should adopt a category of Indoor Assistive Mobility Device, defined as:

Any assistive mobility device designed to be usable indoors which meet the scoping requirements of the ADAAG which may be modified from time to time, (i.e.: Currently a footprint not larger than 30 inches in width and 48 inches in length and weigh not more than 600 pounds when occupied) and are not propelled by fossil fuel powered engines.

This definition would be inclusive of manual and power driven wheelchairs, scooters, walkers, crutches, canes, braces, EPAMD's, or any other item, piece of equipment which is used to increase, maintain, or improve the functional capabilities of the individual with a mobility related disability.”



500 Fox Ridge Road, Saint Louis, Missouri 63131



An attempt by The Department to define assistive devices beyond that which is provided for in The 1973 Rehabilitation Act As Amended in 1998 can only result in the narrowing of rights of individuals with disabilities and inhibit the use of Universal Design and new technologies in improving the quality of life of people with disabilities, extending their independent life and providing economic benefits to our society as a whole.

In 1991 when publishing the first regulations implementing the ADA US Attorney General Richard Thornburgh consistently made reference to the fact that there would be no exhaustive list of devices and services because any attempt to do so would eliminate the new devices that will become available with new and emerging technology. After reviewing the current NPRM and the sections applicable to EPAMD's the wisdom of Attorney General Thornburgh has never been more apparent.

Question: “Should the Department expand its definition of wheelchair to include Segways*?”

Segways should be classified identically to a wheelchair. The definition contained in federal law, The 1973 Rehabilitation Act as Amended in 1998, is inclusive of the Segway.

By adopting the following category The Department will provide a timeless standard and further clarity to regulations intended to implement the law and focus attention on the behavior of individual users.

Indoor Assistive Mobility Devices:

Any assistive mobility device designed to be usable indoors which meet the scoping requirements of the ADAAG which may be modified from time to time, (i.e.: Currently a footprint not larger than 30 inches in width and 48 inches in length and weigh not more than 600 pounds when occupied) and are not propelled by fossil fuel powered engines.

This definition would be inclusive of manual and power driven wheelchairs, scooters, walkers, crutches, canes, braces, EPAMD's, or any other item, piece of equipment which is used to increase, maintain, or improve the functional capabilities of the individual with a mobility related disability

Question: “Are there better ways to define different classes of mobility devices, such as the weight and size of the device that is used by the Department of Transportation in the definition of “common wheelchair”?”

We believe that the following method of defining assistive mobility devices fundamentally complies with federal law and favored policy benefiting individuals with disabilities and our society as a whole.

Indoor Assistive Mobility Devices:

Any assistive mobility device designed to be usable indoors which meets the scoping requirements of the ADAAG which may be modified from time to time, (i.e.: Currently a footprint not larger than 30 inches in width and 48 inches in length and weigh not more than 600 pounds when occupied) and are not propelled by fossil fuel powered engines. This definition would be inclusive of manual and power driven wheelchairs, scooters, walkers, crutches, canes, braces, EPAMD's, or any other item, piece of equipment which is used to increase, maintain, or improve the functional capabilities of the individual with a mobility related disability.

Mobilizing America's Heroes



500 Fox Ridge Road, Saint Louis, Missouri 63131



Outdoor Assistive Mobility Devices:

Any assistive device designed with a primary purpose of outdoor use whether or not meeting the scoping requirements of the ADAAG and whether manually propelled or powered by engines operate on batteries, fossil, or other fuels and be inclusive of golf cars, bicycles, tricycles, or any other mobility aid designed to operate in areas without defined pedestrian routes.

Question: “Should the Department maintain the non-exhaustive list of examples as the definitional approach to the term "manually powered mobility aids"? If so, please indicate whether there are any other non-powered or manually powered mobility devices that should be considered for specific inclusion in the definition, a description of those devices, and an explanation of the reasons they should be included.”

The Department should continue to follow the lead of former US Attorney General Richard Thornburgh who in 1991 consistently stated that there would be no exhaustive list of devices and services because any attempt to do so would eliminate the new devices that will become available with new and emerging technology

Question: “Should the Department adopt a definition of the term "manually powered mobility aids"? If so, please provide suggested language and an explanation of the reasons such a definition would better serve the public. The proposed regulation regarding mobility devices, including wheelchairs, is discussed in the section-by-section analysis for § 35.137.

By adopting our proposed categories for assistive mobility devices any need for further defining “manually powered mobility age” would be moot.

Question: “Are there types of personal mobility devices that must be accommodated under nearly all circumstances? Conversely, are there types of mobility devices that almost always will require an assessment to determine whether they should be accommodated? Please provide examples of devices and circumstances in your responses.”

Indoor Assistive Mobility Devices are examples of the types of personal mobility devices that must be accommodated under nearly all circumstances.

Outdoor Assistive Mobility Devices should be accommodated if they are of a size and weight that meet the scoping requirements of the ADAAG, their operation would not pose an actual risk of potential harm to others.

Question: “Should motorized devices that use fuel or internal-combustion engines (e.g., all-terrain vehicles) be considered personal mobility devices that are covered by the ADA? Are there specific circumstances in which accommodating these devices would result in a fundamental alteration?”

Motorized devices that use internal combustion engines should be considered personal mobility devices covered by the ADA and their use should be permitted by the development of policies creating those conditions which would permit the use of Outdoor Assistive Mobility Devices.



500 Fox Ridge Road, Saint Louis, Missouri 63131



A public entity shall establish policies to permit the use of outdoor assistive mobility devices in the outdoor environment by individuals with disabilities when it is reasonable to allow an individual with a disability to purchase or participate in a service, program, or activity. Whether a modification is reasonable to allow the use of an outdoor assistive mobility device by an individual with a disability shall be determined based on;

- The dimensions, weight, and operating characteristics of the device.
- The actual risk of harm to others by the operation of the Outdoor Assistive Mobility Device.
- The actual risk of harm to the environment or natural or cultural resources or conflict with federal land management laws and regulations in relation to other permitted means of mobility such as horseback

A public entity should be under no obligation to stow an Outdoor Assistive Mobility Device when not in use.

Question: “Should personal mobility devices used by individuals with disabilities be categorized by intended purpose or function, by indoor or outdoor use, or by some other factor? Why or why not?”

Assistive mobility devices should be categorized by their design and operating characteristics which determine the areas appropriate for their use. Assistive mobility devices should be categorized in one of the two following categories:

Indoor Assistive Mobility Devices:

Shall mean any assistive mobility device designed to be usable indoors which meets the scoping requirements of the ADAAG which may be modified from time to time, (i.e.: Currently a footprint not larger than 30 inches in width and 48 inches in length and weigh not more than 600 pounds when occupied) and are not propelled by fossil fuel powered engines.

This definition would be inclusive of manual and power driven wheelchairs, scooters, walkers, crutches, canes, braces, EPAMD's, or any other item, piece of equipment which is used to increase, maintain, or improve the functional capabilities of the individual with a mobility related disability.

Outdoor Assistive Mobility Devices:

Shall mean any assistive device designed with a primary purpose of outdoor use whether or not meeting the scoping requirements of the ADAAG and whether manually propelled or powered by engines operate on batteries, fossil, or other fuels. This definition would be inclusive of golf cars, bicycles, tricycles, or any other mobility aid designed to operate in areas without defined pedestrian routes.



500 Fox Ridge Road, Saint Louis, Missouri 63131

